United Nations A/CN.9/492

General Assembly

Distr.: General
17 May 2001

Original: English, French, Spanish

United Nations Commission on International Trade Law
Thirty-fourth session
Vienna, 25 June – 13 July 2001

Draft Model Law on Electronic Signatures

Compilation of Comments by Governments and International Organizations

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V.01-84079

Introduction

1. The Commission, at its thirtieth session, in 1997, endorsed the conclusions reached by the Working Group on Electronic Commerce at its thirty-first session with respect to the desirability and feasibility of preparing uniform rules on issues of digital signatures and certification authorities and possibly on related matters (A/CN.9/437, paras. 156 and 157). The Commission entrusted the Working Group with the preparation of uniform rules on the legal issues of digital signatures and certification authorities.[1] The Working Group began the preparation of uniform rules for electronic signatures at its thirty-second session (January 1998) on the basis of a note prepared by the Secretariat (A/CN.9/WG.IV/WP.73). At its thirty-first session, in 1998, the Commission had before it the report of the Working Group (A/CN.9/446). The Commission noted that the Working Group, throughout its thirty-first and thirty-second sessions, had experienced manifest difficulties in reaching a common understanding of the new legal issues that had arisen from the increased use of digital and other electronic signatures. However, it was generally felt that the progress achieved so far indicated that the draft uniform rules on electronic signatures were progressively being shaped into a workable structure. The Commission reaffirmed the decision it had taken at its thirtieth session as to the feasibility of preparing such uniform rules and noted with satisfaction that the Working Group had become generally recognized as a particularly important international forum for the exchange of views regarding the legal issues of electronic commerce and for the preparation of solutions to those issues.[2]

2. The Working Group continued its work at its thirty-third (July 1998) and thirty-fourth (February 1999) sessions on the basis of notes prepared by the Secretariat (A/CN.9/WG.IV/WP.76, 79 and 80). At its thirty-second session, in 1999, the Commission had before it the reports of the Working Group on the work of those two sessions (A/CN.9/454 and A/CN.9/457, respectively). While the Commission generally agreed that significant progress had been made in the understanding of the legal issues of electronic signatures, it was also felt that the Working Group had been faced with difficulties in building a consensus as to the legislative policy on which the uniform rules should be based. After discussion, the Commission reaffirmed its earlier decisions as to the feasibility of preparing such uniform rules and expressed its confidence that more progress could be accomplished by the Working Group at its forthcoming sessions. While it did not set a specific time-frame for the Working Group to fulfil its mandate, the Commission urged the Group to proceed expeditiously with the completion of the draft uniform rules. An appeal was made to all delegations to renew their commitment to active participation in the building of a consensus with respect to the scope and content of the draft uniform rules.[3]

3. The Working Group continued its work at its thirty-fifth (September 1999) and thirty-sixth (February 2000) sessions on the basis of notes prepared by the Secretariat (A/CN.9/WG.IV/WP. 82 and 84). At its thirty-third session (2000), the Commission had before it the report of the Working Group on the work of those two sessions (A/CN.9/465 and 467, respectively). It was noted that the Working Group, at its thirty-sixth session, had adopted the text of articles 1 and 3 to 12 of the uniform rules. Some issues remained to be clarified as a result of the decision by the Working Group to delete the notion of enhanced electronic signature from the draft uniform rules. A concern was expressed that, depending on the decisions to be made by the

Working Group with respect to articles 2 and 13, the remainder of the draft provisions might need to be re-examined to avoid creating a situation where the standard set by the uniform rules would apply equally to electronic signatures that ensured a high level of security and to low-value certificates that might be used in the context of electronic communications that were not intended to carry significant legal effect.

4. After discussion, the Commission expressed its appreciation for the efforts made by the Working Group and the progress achieved in the preparation of the draft uniform rules on electronic signatures. The Working Group was urged to complete its work with respect to the draft uniform rules at its thirty-seventh session and to review the draft guide to enactment to be prepared by the Secretariat.[4]

5. At its thirty-seventh session (September 2000), the Working Group discussed the issues of electronic signatures on the basis of the note prepared by the Secretariat (A/CN.9/WG.IV/WP.84) and the draft articles adopted by the Working Group at its thirty-sixth session (A/CN.9/467, annex).

6. After discussing draft articles 2 and 12 (numbered 13 in document A/CN.9/WG.IV/WP.84), and considering consequential changes in other draft articles, the Working Group adopted the substance of the draft articles in the form of the draft United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Signatures. The text of the draft Model Law is annexed to the report of the thirty-seventh session of the Working Group (A/CN.9/483).

7. The Working Group discussed the draft guide to enactment of the draft Model Law on the basis of the notes prepared by the Secretariat (A/CN.9/WG.IV/WP.86 and WP.86/Add.1). The Secretariat was requested to prepare a revised version of the draft guide reflecting the decisions made by the Working Group, based on the various views, suggestions and concerns that had been expressed at the thirty-seventh session. Due to lack of time, the Working Group did not complete its deliberations regarding the draft guide to enactment. It was agreed that some time should be set aside by the Working Group at its thirty-eighth session for completion of that agenda item. It was noted that the draft UNCITRAL Model Law on Electronic Signatures, together with the draft guide to enactment, would be submitted to the Commission for review and adoption at its thirty-fourth session, to be held at Vienna from 25 June to 13 July 2001.[5]

8. In preparation for the thirty-fourth session of the Commission, the text of the draft Model Law as approved by the Working Group was circulated to all governments and to interested international organizations for comment. The comments received as of 15 May 2001 from three governments and one non-governmental organization are reproduced below in the form in which they were communicated to the Secretariat.

Compilation of comments

A. States

Colombia

[Original: Spanish]

1. General context

The Government of Colombia has been closely following the work being done in UNCITRAL; not only has it participated in this work, but it has incorporated its proposals in Colombian domestic legislation. Law 527 of 1999 is a clear example of this in that it incorporates the 1996 UNCITRAL Model Law on Electronic Commerce, with a few modifications reflecting Colombia's desire to give greater legal security to transactions using data messages.

Given the importance of the text adopted by UNCITRAL, the principles of the Model Law were included in Law 527 of 1999. However, in spite of the advances brought about in this way, the Colombian Drafting Commission also introduced a section on the conditions to govern the operations of certifying authorities,[1] as well as on the functions of the national agency responsible for authorizing their operations and performing functions of control, inspection and monitoring in order to protect users and consumers in the new market served by the companies concerned.

In order to ensure greater legal security for the users of electronic commerce, an obligation was created for corporate bodies wishing to provide certification services to register[2] with a State organ.[3] This provision was implemented by Decree 1747 of the year 2000, through which the Government laid down the conditions for the exercise of certifying activities, and the regulating process was completed with the issuance in the same year of Resolution 26930 of the Supervisory Authority for Industry and Commerce.

In addition, to make it possible to keep abreast, at the national level, with the work of UNCITRAL and in particular of the Working Group on Electronic Commerce, an ad hoc inter-agency committee has been set up to study the implications for Colombia of the draft Model Law on Electronic Signatures drawn up by the Working Group.

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1 Referred to as certifying entities in the Colombian text.

2 Law 527 of 1999 refers in this regard to "authorization for the exercise of their activities".

3 Supervisory Authority for Industry and Commerce.

2. Comments on the draft Model Law on Electronic Signatures

Recognition must be given to the excellent work done by the Working Group, and the merits of the document submitted to delegations, which reflects careful, dedicated work taking into account the complexity of the subject, deserve to be stressed.

However, the concrete objective of the draft text and its relationship with the earlier work done by the Working Group in adopting the Model Law on Electronic Commerce is not clear from the text.

The 1996 Model Law is a general proposal regarding the legal treatment of data messages and the legal security that is needed for commercial relations using such messages. It enshrines the fundamental principles that States may follow in adopting regulations on electronic commerce, thus contributing to the desired legal harmonization.

Although it is clear that the draft under consideration[4] deals with a specific subject, important for the identification and authentication of users, it must be remembered that the draft belongs in a broader context and is difficult to separate from that context. This is why the first problem for the Colombian Government relates to the objective of the Model Law and its consistency with earlier work on electronic commerce within UNCITRAL.

It is not sufficiently clear what the purpose of the draft is and what its relationship is with the Model Law on Electronic Commerce. It is evident for Colombia that there must be enough consistency in the work of UNICTRAL for a clear message to be given to States that are in the process of incorporating the Commission's proposals in their legislation, so that they can understand the background of each proposal and ensure that their legal provisions are not contradictory but rather complementary, and so that they can see that the two texts are aimed at common objectives, such as the harmonization and unification of law in this area, the creation of legal security and the lessening of uncertainty in electronic commercial relations.

In this regard, it is to be noted that the present draft does not take into account the general guidelines given in the Model Law on Electronic Commerce, such as those relating to functional equivalents, to which it does not make specific reference. In some cases it follows the guidelines expressly, as with the sphere of application, interpretation, variation by agreement and the definition of a "data message", to give some examples.

Functional equivalents are basic to the application of the model laws, since they are inherent in the legal security offered by technological tools, tools that also make it possible to establish a firm link between a document and the signature confirming it.

[4] Draft Model Law on Electronic Signatures.

The draft indicates that it applies where *electronic signatures* are used in the context of commercial activities, whereas the Model Law on Electronic Commerce refers to *data messages* related to commercial activities. In the case of Colombia, Law 527 of 1999 provides for a wider definition because it applies to all information in the form of *data messages*, without limiting them to data messages used in the context of commercial activities.

Colombia shares the view that the reference to commercial activities and the use of the word "commercial" to define the scope of the draft are sufficiently broad to avoid limitations, and it is proposed to leave the text as it has been approved, bearing in mind that States can enlarge its scope.

The draft would apparently complement the 1996 Model Law on Electronic Commerce, in view of the fact that there are no definitions, for example, of "writing" or "original", which are basic concepts for the interchange of data messages in digital form, in application of the principle of functional equivalence, together with the other principles set out in chapter III on the communication of data messages.

However, this situation is not clear from the draft, because it cannot be inferred from a reading of the draft whether the two instruments are complementary or totally independent, so that States could opt for one or the other, which would lead to ambiguities from the point of view of States whose legislatures have adopted the 1996 Model Law on Electronic Commerce as a frame of reference. A recommendation should be included for these countries, as well as a more specific recommendation, concerning the two texts, for countries that have not yet adopted them or are in the process of doing so.

This point should be clarified in the legal guide to enactment of the draft Model Law, and the recommendation should be included in the resolution of the Commission approving the Model Law on Electronic Signatures and the guide to enactment, making it clear that the Model Law on Electronic Signatures and the Model Law on Electronic Commerce should be adopted together or in a complementary manner.

In addition, the draft does not include a definition of an "electronic signature considered reliable" or an "electronic signature with legal effects" as determined by a provider of certification services, to be distinguished from the definition of an "electronic signature"; that would help to remove ambiguities.

The signature should be linked to a document and express the agreement of the signatory to the content of the document; in this light, article 6 on compliance with a requirement for a signature is not very clear, and its drafting could be improved, especially with regard to legal effects.

Article 6 establishes that the requirement for a signature is met in relation to a data message if a method of electronic signature is used which is as reliable as appropriate for the purposes concerned. This would permit the parties to establish an agreement on the matter.

It also indicates that an electronic signature is considered to be reliable when the signature creation data are linked to the signatory and to no other person, when they are under the signatory's exclusive control, when any alteration to the signature made after the time of signing is detectable[5] and, additionally, when a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the relevant information and any alteration made to that information is detectable.

It is therefore to be understood that an electronic signature that is considered reliable is the functional equivalent of a handwritten signature.

It must be added that, although reference is made to the question of an alteration made after the time of signing, this is not linked to a specific date, something that would make it possible to detect an alteration with greater certainty and, in turn, determine the legal effects of such alteration. The subject needs to be considered in greater detail.

The draft also foresees that there will be a person, organ or authority, whether public or private, competent to determine what electronic signatures are considered reliable, and the appropriate method, which must be compatible with recognized international standards.

It is proposed that, to avoid a duplication of competencies between organs of different States, the Commission should designate an appropriate international organ to fix international standards. It would be understood that this organ would make proposals and recommendations to States so that, through their regular, internal channels, they could establish the necessary conditions for their adoption, always without prejudice to the application of the principle of autonomy that is applicable to all aspects of the draft.

It must be borne in mind that the overriding principle is the right of private persons to establish the technological conditions that will govern their relations; if they do not exercise this right, what applies is international standards previously defined by an international organ and adopted by the State, either through a domestic body or as a result of the development of the practices of electronic commerce.

It would make no sense to restrict the freedom of private persons to agree on a particular technology for an electronic signature that is suitable for the conduct of their relations, still less to exclude its use, by fixing an obligatory standard. International standards will make it possible to guide users of electronic commerce in the appropriate and reliable utilization of information technologies.

The international organ proposed for establishing international standards must bear in mind that the standards must not contradict the principle of technological neutrality.

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[5] These requirements are similar to those set out in article 28 of Law 527 of 1999 concerning the legal attributes of a digital signature, when it is considered equivalent to a handwritten signature.

The question of international standards becomes important when one seeks to promote the harmonization and uniform application of the legal aspects of electronic commerce, since they will permit States, technologically, to achieve minimum levels of protection and consequent security.

The existence of an organ to consider and establish international standards would help to reduce the technological gap between the various countries and allow a homogeneous application of the tools of electronic commerce.

The draft expressly introduces the criterion of technological neutrality in the form of *equal treatment of signature technologies*, by indicating, among other things, that, unless the parties agree otherwise, signature technologies must receive equal treatment and no method of creating an electronic signature that satisfies the requirements in article 6 (1) or meets the requirements of applicable law is to be excluded, restricted or deprived of legal effect. This criterion is met, from our point of view, in the Model Law on Electronic Commerce and in Law 527 of 1999, in the definition of a signature in article 7, which is not so specific but has similar legal consequences.

In regard to this aspect, the draft is inconsistent. Article 3, combined with article 5, gives the parties the possibility to assign legal validity to particular methods of creating electronic signatures. If, however, one reads article 7 carefully, this possibility will be limited, because the compliance of the electronic signature used with article 6 will be determined by the person, organ or authority, whether public or private, specified by the enacting State as competent to determine which electronic signatures satisfy the provisions of article 6—that is to say, comply with a requirement for a signature. The possibility for the parties to make exceptions or agree on something else is thus reduced.

Legal systems based on written law, if they accepted this type of provision, would have to adopt it in an imperative form, because otherwise it would have no concrete effect, apart from the fact that non-compliance would lead to sanctions. For Colombia, this aspect would have no practical function if it is taken into account that party autonomy takes precedence in the whole context of the law. In other words, an agreement between the parties could not change what had been previously established by a competent organ regarding compliance of an electronic signature with article 6.

The proposal would be that international standards should be determined by an international organ designated by the Commission to serve as the point of reference for States, that States should determine the manner of adoption of these proposed standards, and that what appears in square brackets should be deleted: "[*Any person, organ or authority, whether public or private, specified by the enacting State as competent*]".

Otherwise, if the proposal to designate an international organ for fixing standards is not accepted, it would then be important to preserve the principle of autonomy by adding to the proposed article the words "without prejudice to the right of the parties to agree on the use of any method for creating an electronic signature"—so that the article would read as follows: "*Any person, organ or*

authority, whether public or private, specified by the enacting State as competent may determine which electronic signatures satisfy the provisions of article 6, without prejudice to the possibility for the parties to agree on the use of any method for creating an electronic signature."

The draft provides that whether any systems, procedures and human resources utilized by a certification service provider are trustworthy (reliable) is to be determined in the light of factors such as: (a) financial and human resources, including existence of assets; (b) quality of hardware and software systems; (c) certification procedures and availability of information; (d) regularity and extent of audit by an independent body; (e) the existence of a declaration by the State, an accreditation body or *the certification service provider* regarding compliance with or existence of these factors.

In this way, the certification service provider is being given discretion to make a declaration regarding compliance with or existence of the factors determining the reliability of the systems, procedures and human resources utilized. It would be more appropriate, as happens in Colombia, for such a declaration to be made by the independent body that carries out the audit, which would be a neutral third party on the same footing as the State of an accreditation body, and not the certification service provider himself, as that would lead to many different interpretations. It is therefore proposed to eliminate this reference.

Article 10 (f) would read as follows:

"*(f) The existence of a declaration by the State, an accreditation body or an independent auditing body regarding compliance with or existence of the foregoing*".

The draft again mentions a signature that is "legally effective". It would be important to clarify what type of electronic signature is referred to; this might be the functional equivalent of a handwritten signature, which would be an electronic signature considered reliable. Under this provision, there may exist electronic signatures that are used for other purposes than to produce legal effects, such as those referred to in article 7 of the Model Law on Electronic Commerce. This point may take on more importance if we bear in mind that in other legislations concepts exist such as a reliable electronic signature, an advanced electronic signature, a certified electronic signature or, in the case of Colombia, a digital signature, as functional equivalents of a handwritten signature.

With regard to digital certificates, the draft provides that a certificate issued or electronic signature created or used abroad shall have the same legal effect domestically as certificates issued or electronic signatures created or used in the territory of the receiving State, provided that they offer a *substantially equivalent level of reliability*, this level being established in conformity with recognized international standards and any other relevant factors. This system of cross-border recognition also allows for an agreement between the parties, unless this agreement would not be valid or effective under applicable law.

There is a problem concerning the definition of a *substantially equivalent level of reliability*, a rather ambiguous and broad expression which represents a difficulty

for countries that rely on written laws, because there needs to be certainty about the elements composing this definition so that it can be applied and misinterpretations avoided.

There can be no doubt that, while electronic commerce has demonstrated the advantages that it offers in facilitating transactions, its use generates uncertainty in view of the need to guarantee not only the security of transactions but also confidence in them. For this reason, there is a need for vigilance and, if appropriate, supervision on the part of State organs that will ensure the proper operation of the system and the protection of the rights of users and consumers.

3. General outlines for a guide to enactment of the Model Law on Electronic Signatures

The Colombian Government would incline towards having the terms of the guide reflect, in the first place, the basic principles of the Model Law on Electronic Commerce—namely, the international character of the Law, technological neutrality, functional equivalents, autonomy and flexibility, so as to preserve the link with the work done on the Model Law on Electronic Commerce and to contribute to legal harmonization.

The guide must state the specific objective of the Model Law and indicate the importance of States taking into account the work done by the Working Group on Electronic Commerce since 1985, so that they can consider the subject as a whole and so that harmony will be preserved in their incorporation of the provisions in national legislation.

Those States that have not yet defined their internal position with regard to electronic commerce need a general, overall vision of the work of UNCITRAL and must not see the documents as isolated pieces of work.

If the text of the Model Law does not give any details regarding international standards or the organ to determine them, it will be useful for them to be mentioned in the guide so that they can be taken into account by States when they consider the reliability of their systems and the criteria to be taken into account when they accept the use of these technologies.

Similarly, if provisions concerning monitoring and supervision are not included in the Model Law, it will be important to mention the usefulness of these aspects in the digital environment, taking into account not only the application of the principles of electronic commerce but also the good faith of those who engage in electronic transactions and the protection of the rights of consumers.

Through the protection of consumers' rights, States can be helped to adopt effective, acceptable tools that will permit the development of electronic commerce, because the existence of effective supervision does not limit development; on the contrary, it creates certainty for those using electronic means in their commercial relations.

4. Legal aspects of electronic commerce

Throughout the discussions that have taken place within UNCITRAL and the Working Group on Electronic Commerce, an attempt has been made to provide legal mechanisms which will eliminate uncertainty in electronic relations and create the necessary validity and legal force to allow these transactions to be relied on.

This quest for legal security has led to the formulation of the Model Law on Electronic Commerce and the Model Law on Electronic Signatures, aimed at harmonizing the application of law in the field of electronic commerce, taking into account technological inequalities in the various States of the world, so that they can adopt general principles permitting legal harmonization.

However, there are still many issues that have not been resolved, and for some States proposals like the model laws are not sufficient. For this reason, discussion has commenced on the possibility of concluding a binding international instrument on electronic commerce, in which the legal conditions to govern commerce using data messages will be established in a uniform manner.

At the present time, there are other legal arguments that might justify the preparation of such an instrument so as to develop the principle of functional equivalents and the definitions of "signature", "writing" and "original" in order to extend their scope of application, so that the different legal systems can be integrated.

For the moment, it will be important for Colombia to hear the views of other delegations in this regard and examine the issues arising.

5. Possible future work on electronic commerce

Colombia considers the three topics proposed for the future work of the Working Group to be highly relevant. It also considers that all three subjects are equally important and topical in the developing area of electronic commerce.

In view of the importance of these topics, it is suggested that relevant work should begin in coordination with those working groups and international organizations that are now considering the subjects simultaneously, in order not to lose time and so as to avoid duplication. In this connection, it should be recalled that the Commission has held a debate on the appropriate forum for discussing and studying possible subjects for the Working Group on Electronic Commerce, and the conclusion was reached that the appropriate forum was undoubtedly UNCITRAL.

For Colombia, the proposed topics of electronic contracting and on-line arbitration are of particular importance, without detracting from the importance of the question of dematerialization of documents.

With regard to electronic contracting, this is a subject of considerable uncertainty at the present time, and doubts surround the prospects for its development. Stress has been laid on the relevance of autonomy and good faith of

the parties in electronic contracting, and the links with the UNIDROIT Principles of International Commercial Contracts will have to be strengthened further.

In the case of Colombia, this topic is particularly relevant in the light of efforts being made to ensure that electronic commerce becomes a tool used by Colombian entrepreneurs, within the parameters of flexible and reliable legislation, with electronic contracting taking place constantly.

With regard to the topic of on-line arbitration, its connection with electronic contracting must be taken into account. Traditionally, arbitration has helped to expedite the settlement of conflicts between contracting parties, and has produced solutions to questions of applicable jurisdiction, legislation and domicile.

There can be no doubt that the topic is closely linked to the day-to-day activities of entrepreneurs and to the use of electronic contracting to govern their relations.

However, Colombia considers that it would be relevant to begin a specific study on the importance of the activities of the public administration, in view of the fact that the latter is increasingly becoming a major actor in commerce and that its intervention is vital for the development of commerce.

Despite the various economic theories calling for non-intervention of the State in the economy, it has to be remembered that the State is one of the main promoters of interaction between enterprises, whether as an intermediary in procedures relating to external trade, exchange control, customs, etc., or as a purchaser and contractor of goods and services.

It must also be recognized that great changes are taking place in the manner in which States operate. They require a physical and technological infrastructure and procedures of high quality, and they need to be more productive, competitive and efficient so as to be able to provide a public service under the best possible conditions.

Against this background, the great majority of States have embarked on public policies enabling them to take up the challenges of the new economy and to develop an appropriate physical, technological and human infrastructure to cope with the needs of the new forms of commercial relations.

These policies are aimed not just at allowing the country to keep technologically abreast of other countries, but also at the practical development of procedures that will permit interaction with users in a framework of security and legal certainty.

This makes it important to draw up uniform rules on the utilization of data messages and electronic signatures in activities or contracts associated with the public administration, the notarization function and documents subject to special formal requirements for their validity or confirmation, and develop ways of allowing the procedures concerned to adapt to a digital environment without losing their essential character.

For Colombia, it is clear that the UNCITRAL Working Group on Electronic Commerce, on the basis of the principles set out in the Model Law on Electronic Commerce and in the draft Model Law on Electronic Signatures, can give effective guidance to national legislators in countries with a continental legal tradition, or countries whose legal provisions call for administrative and notarization procedures involving an obligatory signature or authentication by a third party, with additional requirements relating to the identification of the participants and/or the personal appearance of the parties.

Functional equivalents can be developed using security techniques such as digital signatures and digital certificates which will guarantee the security, integrity and confidentiality of the information sent or received by the parties to an act or transaction and a third party confirming the identity of the parties and the content of their declarations.

The formulation of uniform principles of functional equivalence in these areas would help the State to shift more efficiently to electronic information systems, and would establish standards of legal security with regard to information made available by enterprises and citizens to the State or government agencies.

6. Conclusions

The Colombian Government, through the inter-agency committee representing various public and private bodies concerned with electronic commerce, is closely following the discussions in the various international forums concerning this subject, and especially the discussions within UNCITRAL, which is considered the appropriate forum for considering matters related to electronic commerce.

In view of the interest in electronic commerce in Colombia, the Government intends to continue working in this field. The present document is therefore a preliminary indication of the position of the Government, and it hopes to develop these points further during the session of the Commission.

Czech Republic

[Original: English]

General comments

We highly appreciate all activities and work done by the UNCITRAL in the sphere of unification of rules, concerning the electronic commerce. We would like to use this opportunity to inform you, that on October the 1st 2000 the Act N° 227/2000 Coll., on electronic signature, has entered into force in the Czech Republic.

Specific comments

Article 1: The scope of the Czech act N° 227/2000 Coll. is broader, than the scope of the draft UNCITRAL Model Law, as defined in this Article. It is not limited to commercial activities. Nevertheless, due to the aim of draft Model Law, we find the sphere of application to be sufficient and satisfying.

Article 7: We agree with the proposed wording in the square brackets. Under the abovementioned act N° 227/2000 Coll. special authority, Office for Personal Data Protection, is given the power to accredit qualified certification services providers. This accreditation is related to the enhanced electronic signature, which is to be used for specific purposes. We consider this to be a kind of determination anticipated in this provision of the Model Law.

Conclusion

We have found the draft of UNCITRAL Model Law to be highly valuable source of legal information during recent (and also future) process of preparation of relevant Czech law. At present stage, a matter of high priority for our country is the harmonization of our law with the law of the European Union.

France

[Original: French]

In general, France would not like to see the text, which is the result of several years of negotiation, reopened for discussion at the next session of the United Nations Commission on International Trade Law.

It wishes to make the following brief suggestions, which should not affect the balance of the text.

Article 9 (1) (d) (iv): The end of the sentence refers to liability stipulated by the certification service provider, which is already the subject of the main sentence; subparagraph (d) (iv) should therefore read:

"any limitation on the scope or extent of *its* liability stipulated by *it*"

It should nevertheless be borne in mind that liability is, moreover, stipulated by each of the parties (certification service provider and signatory) and not only by the provider. Consequently, the following sentence could be added to the end of article 8, which deals with the conduct of the signatory:

"*It shall provide to the certification service provider for any party relying on the certificate reasonably accessible means to ascertain, where relevant, from the certificate referred to in article 9 or otherwise, any limitation on its responsibility.*"

Article 11 (b): The words "where an electronic signature is supported by" should be replaced by "where a signature is based on".

B. Non-governmental organizations

Cairo Regional Centre for International Commercial Arbitration

[Original: English]

It looks that the draft will need more time to be studies carefully.

The accurate determination of the legal responsibility in some cases of violation is still missing in the draft.

However, it appears that reference to the general rules of responsibility would still be necessary in cases where it would not be required to have special treatment.

Also, the limits of responsibility of parties in several articles would give space to some problems and difficulties, as it appears that up till now the technicalities of guaranteeing the signatures are not yet complete, and until such development is reached the application of these provisions would be highly risky.

This defect is reflected in the drafting of the project in many instances. Moreover, reference is made to standards and factors which are not determined accurately in considering a certificate or e-signature having a substantially level of reliability.

It is very important also to note that due to the fact many Arab states are now drafting laws of e-commerce and e-signature, accurate translation of documents and provisions would be greatly helpful. In comparing the Arabic and English versions it appears that the Arabic version is far from being satisfactory.

A detailed memo is being prepared to be sent to the UNCITRAL Headquarters shortly.

[1] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 17* (A/52/17), paras. 249-251.

[2] Ibid., *Fifty-third Session, Supplement No. 17* (A/53/17), paras. 207-211.

[3] Ibid., *Fifty-fourth Session, Supplement No. 17* (A/54/17), paras. 308-314.

[4] Ibid., *Fifty-fifth Session, Supplement No. 17* (A/55/17), paras. 380-383.

[5] A/CN.9/483, paras. 21-23.